

SENATE BILL REPORT

SB 6364

As of February 6, 2014

Title: An act relating to parental rights and responsibilities of sexual assault perpetrators and survivors.

Brief Description: Concerning parental rights and responsibilities of sexual assault perpetrators and survivors.

Sponsors: Senators Kohl-Welles, Fraser, Keiser, Rolfes and Cleveland.

Brief History:

Committee Activity: Law & Justice: 2/06/14.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Kelly Walsh (786-7755)

Background: Parentage may be established under the Uniform Parentage Act based on a presumption, an acknowledgment, or an adjudication. A person is a presumed parent if the child was born in the context of marriage or domestic partnership, or shortly thereafter, or if the person resided with the child and openly held the child out as the person's own for the first two years of the child's life. A person is an acknowledged parent if the person signs an acknowledgment of paternity that is later filed with the State Registrar of Vital Statistics. A person is an adjudicated parent if the person's parentage was determined in a court proceeding. A judgment and order establishing parentage may include terms requiring provision of child support and payment of birth-related costs, and requiring amendment of the child's birth certificate. It must also make residential provisions for minor children. Temporary orders may be issued while the action is pending. The procedures and timelines for challenging parentage vary depending on whether the parentage is presumed, acknowledged, or adjudicated. In general, a challenge must be brought within a maximum of four years of the child's birth or establishment of parentage. A signatory may rescind a paternity acknowledgement by filing an action within 60 days of acknowledgement, or by the next court hearing concerning the child, whichever is sooner, and may challenge the acknowledgement only for limited reasons past that point.

If a parent proposes to relinquish a child for adoption, any other relinquishing parent, including an alleged father, is entitled to notice. Both parents may consent to the adoption; however, the court may also terminate the parent and child relationship with a non-

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consenting parent or alleged father under certain circumstances, for instance, if the parent has been found guilty of rape or incest of the other parent that resulted in conception of the adoptee.

Parenting plans are mandatory in dissolution cases in which there are minor children, and are optional in child custody cases. The parenting plan must not establish mutual decision making and must limit residential time or visitation if the parent is found to have engaged in certain conduct, including an assault or sexual assault that causes grievous bodily harm or the fear of such harm. Criteria that require mandatory residential or visitation restrictions in a parenting plan also apply to child custody orders. If the court finds that limitations on residential time will not protect the child from harm or abuse, the court must restrain the parent from all contact with the child.

Evidence regarding the sexual history of an alleged victim is limited in court proceedings. The rules of evidence restrict admissibility in civil cases, and there are specific statutes governing admissibility in criminal sex offense prosecutions, and in proceedings for sexual assault protection orders. In sexual assault protection order proceedings, sexual history evidence is inadmissible unless it concerns the past sexual conduct between the petitioner and respondent and is offered on the issue of consent, or when it is constitutionally required. The court may not admit sexual history evidence unless it is satisfied upon an in-camera hearing that the respondent's evidence is sufficiently specific to impeach the petitioner, it is relevant, and its probative value outweighs the danger of unfair prejudice.

A dependent child is any child who has been abandoned, abused, or neglected by a person legally responsible for the care of the child, is receiving foster care services, or has no parent or guardian capable of adequately caring for the child. Any party may file a petition in juvenile court seeking termination of a parent and child relationship. The petitioner must allege the following:

- that the child has been found to be a dependent child;
- that the court has entered a dispositional order following a fact-finding hearing;
- that the child has been removed or will have been removed at the time of the hearing from the custody of the parent for at least six months pursuant to a finding of dependency;
- that the services ordered have been offered and provided;
- that there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future; and
- that continuation of the relationship clearly diminishes the child's prospects for early integration into a stable and permanent home.

In lieu of such allegations, the petition may alternatively allege that the child was found in such circumstances in which the whereabouts of the child's parent are unknown or that the parent has been convicted of murder, manslaughter, or assault in the first or second degree against one of the parents' children. In certain circumstances, the court may order that a petition seeking termination of the parent and child relationship is filed, including when a child has been born as a result of a sex offense for which the parent was convicted.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): A court process is established to adjudicate parental rights and obligations in cases in which a person has been convicted of sexual assault and the child was conceived as a result of the sexual assault. Sexual assault is defined as any sex offense capable of causing pregnancy. If there is an allegation that a pregnancy resulted from a sexual assault, the court must conduct a fact-finding hearing. The fact-finding hearing is governed by specific procedural and evidentiary rules similar to those currently governing the admissibility of the sexual history of an alleged victim in other civil and criminal cases.

If the court finds by clear, cogent, and convicting evidence that a person has been convicted of sexual assault and a pregnancy resulted from the offense the court must enter an order:

- holding that the person is not a parent of the child, if such an order is requested; or
- consistent with the relief requested by the legal parent or guardian, provided that the relief requested is in the best interest of the child.

Unless the child's legal parent provides express written consent, a person found to have been convicted of sexual assault that resulted in pregnancy has no parental rights with regard to the child, no right to inherit from the child, and no right to notification of, or standing to object to, adoption of the child. If sought by the legal parent, the court must order the person to pay child support, birth-related costs, or both. The court may also award attorneys' fees.

A parenting plan cannot require mutual decision making or designation of a dispute resolution process if it is found that a parent has been convicted of sexual assault or incest against the other parent and the child was born of the offense. Residential time with the child also must be limited if such a finding is made.

A parent's consent to adoption is not required if the court finds that the proposed adoption is in the best interests of the adoptee and the parent has been convicted of sexual assault or incest committed against the other parent and the adoptee was conceived as a result of the offense.

The court must order that a petition seeking termination of the parent and child relationship is filed upon conviction of the parent of sexual assault or incest when the child was conceived as a result. Any party may file a petition seeking termination of the parent and child relationship based on an allegation that the parent has been convicted of sexual assault or incest against the other parent and the child was conceived as a result of the offense.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: CON: This addresses a very difficult issue for a woman who has a lot of difficult decisions to make. The proposed substitute bill only protects survivors when a conviction is obtained. This does not protect a majority of victims.

Clear, cogent and convincing evidence should be the standard because a survivor has very little control over whether a conviction is obtained. There must be an approach that offers hope to all victims and survivors. Clear, cogent, and convincing is the standard of proof for the termination of parental rights and is the appropriate standard in these circumstances. The underlying bill seeks to help all rape survivors and their children so that they do not have to co-parent with their rapist. Victims need and deserve a law that meets their needs. Not requiring a conviction affords all victims a reasonable and comprehensive mechanism to meet their needs. Conviction-only models do not meet these needs. The trend across the nation is not moving toward requiring a conviction in these circumstances. The fact that statutory rape is included and the fact that there are not any timeframes in the bill open the door to abuse of these provisions and will bring about unintended results. This bill may cause issues with federal funding for Department of Social and Health Services (DSHS). There are several mechanical concerns with how this affects the way DSHS does its work.

Persons Testifying: CON: Senator Kohl-Welles, prime sponsor; Andrea Piper-Wentland, WA Coalition of Sexual Assault Programs; David Ward, Legal Voice; Rick Bartholomew, WA State Bar Assn.; David Stillman, Dept. of Social and Health Services.